Supreme Court, U.S.
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No. 01-1497

In The

Supreme Court of the United States

CARMEN CABALLERO RIVERA,
TALÍ BENET SOTO,

Petitioners,

v.

THE CHASE MANHATTAN BANK,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the district court and the court of appeals erred in recognizing the preclusive effect of *res judicata* of a prior, final, and unappealed decision by the district court in an action between the same parties and involving the same allegations and issues by not applying a public policy exception to the application of *res judicata* Petitioners contend exists under state law.

PARTIES

The parties are Plaintiffs-Petitioners Carmen Caballero-Rivera and Tali Benet-Soto ("Petitioners" or "Caballero and Benet") and Defendant-Respondent The Chase Manhattan Bank ("Respondent" or "Chase").

Pursuant to Rule 29.6 of the Rules of the Supreme Court of the United States, the undersigned attorney of record for Chase certifies that the following reflects any publicly held corporate parents, and listing of any publicly held company that owns 10% or more of Chase's stock:

J.P. Morgan Chase & Co.

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Caballero-Rivera, et al. v. *Chase Manhattan Bank, et al.,* No. 00-1858 (D.P.R. May 18, 2001) (Cerezo, J.)

Caballero-Rivera, et al. v. *Chase Manhattan Bank, et al.,* No. 99-1375 (D.P.R. March 30, 2000) (Fusté, J.)

JURISDICTION

The district court had jurisdiction under 28 U.S.C. § 1332(a)(1) (diversity jurisdiction) and § 1441(a) (diversity actions removable) by virtue of the complete diversity of citizenship between Chase and Caballero and Benet, the amount in controversy exceeding $75,000, exclusive of interest and costs. The court of appeals had appellate jurisdiction under 28 U.S.C. § 1291 (appeals of final decisions of district courts), and the Supreme Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTES OR OTHER PROVISIONS CITED

28 U.S.C. § 1332(a)(1)

28 U.S.C. § 1441(a)

28 U.S.C. § 1291

28 U.S.C. § 1254(1)

31 L.P.R.A. § 1851

Fed.R.Civ.P. 60(b)

Art. 1483, Puerto Rico Civil Code, 31 L.P.R.A. § 4124

Fed.R.Civ.P. 9(b)

Fed. R. Evid. 201

Rule 10 of the Rules of the Supreme Court of the U.S.

Rule 29.6 of the Rules of the Supreme Court of the U.S.

STATEMENT OF THE CASE

1. Nature of the Case.

Petitioners Caballero and Benet filed their complaint against Chase and against Housing Investment Corporation ("HIC")[1] in the Superior Court of Puerto Rico (San Juan) (Civil KAC00-2270 (902)). Complaint, Appendix to Petition for a Writ of Certiorari ("App."), at 21A-31A.

A summary of the allegations made to the Superior Court can be obtained from an Opinion and Order by U.S. District Judge Fusté's Order (App. 10A-11A) because the Superior Court complaint is almost identical to the complaint filed by the same Petitioners in Federal Court the year before, which was dismissed by Judge Fusté. Basically, Caballero and Benet accused Chase and its lawyers of committing a fraud on the Superior Court in an

[1] HIC, a subsidiary of Chase's corporate predecessor, was involved in construction financing in Puerto Rico during the 1970's. HIC does not have corporate existence and was not part of the proceedings below. Notice of Removal at 2, n.2, DE 1.

action that Petitioners and others filed in 1979,[2] and which ended in a judgment dismissing that action long ago.

Petitioners claim that their 1979 Superior Court complaint alleging construction defects in the Segovia Condominium was dismissed because they could not controvert false information allegedly submitted by Chase and its lawyers to the effect that the alleged defects in the condominium structure had been repaired according to specifications and government regulations.[3]

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[2] *Sonia Ortiz, by herself and on behalf of Condominio Segovia's apartment owners v. The Chase Manhattan Bank, N.A. et al.*, Civil Núm. 79-7994 (806) (the "1979 Superior Court action".)

[3] Although not essential for disposition of this petition, Chase wants to state for the record that it vehemently denies these allegations. Also, Petitioners misrepresent the basis of the dismissal of the 1979 Superior Court complaint. The Superior Court did not dismiss the complaint because the alleged construction defects had been repaired. It dismissed the action against Chase because Chase only acted as a typical lender. U.S. District Judge Cerezo, who examined the voluminous record of the 1979 Superior Court case in the RICO action Petitioners filed in 1990, described the real basis of the dismissal of the 1979 Supreme Court action as follows:

> The Superior Court of San Juan expressly found, based upon the admissible evidence, that neither Chase nor Housing acted or participated in any way in the repairs of the defects of the condominium. This Court further found that Chase's and Housing's participation in relation to the project was limited to that ordinarily carried out by financial entities, that they exercised the typical and traditional functions of generating interim financing for the construction of the project. *Benet-Soto* v. *The Chase Manhattan Bank, N.A.*, 791 F.Supp. 914, 917 (D.P.R. 1992).

2. Course of the Proceedings.

On July 11, 2000, Chase removed the Superior Court action to the U.S. District Court. In moving to remand on July 17, 2000, Petitioners acknowledged that the Superior Court complaint was essentially the same complaint they filed the year before in federal court before Judge Fusté (Civil No. 99-1375 (JAF)). Motion to Remand, DE 2, ¶ 2, at 1.[4] Judge Fusté dismissed this action. Opinion and Judgment, App. at 9A-20A. Petitioners did not seek reconsideration of that dismissal nor appealed it to the Court of Appeals for the First Circuit.

Petitioners Caballero and Benet argued that removal was improper because the district court "cannot entertain the captioned case because it was already dismissed by way of Rule 9(b) of Federal Procedure and under diversity of citizenship, case number 99-1375 (JAF)." Motion to remand, DE 2, ¶ 2, at 1. They later reiterated their position as follows: "[t]his court lacks jurisdiction to entertain this case under this removal proceeding because of a judgment issued by this Court in *Carmen Caballero* v. *The*

The Superior Court after years of intensive litigation and ample discovery, based on Puerto Rico Supreme Court's seminal decision in *Chase Manhattan* v. *Emanuelli Bauzá*, 111 D.P.R. 708 (1981), 11 Official Translations of the Opinions of the P.R. Supreme Court ("Official Translations") 893, which held that absent extraordinary circumstances, a financial institution is not liable as a matter of law for construction defects *unless* it exceeds its traditional financial role.

[4] References to pleadings and motions in the record *not* in the Appendix will be made to their docket entry number ("D.E. ___", *e.g.* D.E. 2).

Chase Manhattan Bank, et al., (JAF), case number 99-1375." Opposition to motion to dismiss, DE 11, ¶ 2, at 2. Petitioners' position boils down to the proposition that Judge Fusté's judgment bars a lawsuit in federal court but not in Puerto Rico Superior Court.

On September 29, 2000, Chase filed its opposition to the motion to remand (DE 9), and also moved to dismiss on grounds that this action was barred by Judge Fusté's judgment under principles of *res judicata*. On October 6, 2000, Caballero and Benet filed their opposition. They argued that neither Judge Fusté's judgment in Civil 99-1375 (JAF), nor the previous judgment of dismissal by Judge Cerezo sitting in *Benet-Soto* v. *The Chase Manhattan Bank N.A.*, 791 F.Supp. 914 (D.P.R. 1992), barred their identical lawsuit in the Superior Court.

Petitioners argued that Judge Fusté's judgment in Civil No. 99-1375 (JAF) was not *res judicata* to their Superior Court action because it presumably was not on the merits. Petitioners articulated their position as follows: "Apparently, the Defendants do not have the skills necessary to illustrate this court when and how a dismissal under Rule 9(b) is a dismissal on the merits. Especially when there is a state cause of action involve [sic]." Opposition to motion to dismiss, DE 11, ¶ 8, at 4. Petitioners, Caballero and Benet, urged the district court to disregard the bar of *res judicata* based on the argument that the Superior Court would not give Judge Fusté's judgment *res judicata* effect on public policy grounds under Puerto Rico law. *Id.*, ¶ 10, at 5. Petitioners also asked the district court to disregard the previous judgment of the district court in *Benet-Soto* v. *The Chase Manhattan Bank N.A.*, 791

F.Supp. 914 (D.P.R. 1992), because "[t]he court by dismissing the RICO Act action, decided not to get involved in the cause of action of structural defects." *Id.*, ¶ 5, at 3.

3. Disposition by the District Court.

The district court granted Chase's motion to dismiss holding that the complaint was barred by Judge Fusté's previous dismissal and entered judgment. App. 5A-8A. The district court rejected Petitioners' arguments, noting that "Judge Fusté did address the merits of the allegations and found that they did not sufficiently demonstrate a cause of action for fraud." *Id.*, App. 8A. Agreeing with Judge Fusté's assessment, the district court noted that Caballero and Benet had "audaciously . . . attempt[ed] to obtain some more bite at the proverbial apple." App. 7A. The district court concluded that "this is one more episode in a long line of vexatious suits", and dismissed the complaint. Judge Cerezo's Order at App. 8A.

4. Disposition by the Court of Appeals.

On January 10, 2002, the Court of Appeals for the First Circuit affirmed the district court's *res judicata* ruling. It concluded that all three factors for the applicability of the doctrine of *res judicata* – a final judgment on the merits and sufficient identical causes of action and parties – were present and, further, that the prior district court decision (the one considered *res judicata*) did not suffer from any procedural defect. It also noted that Petitioners'

inability "to satisfy the pleading requirements after eight years of litigation" buttressed its conclusions. App. at 4A.

REASONS FOR DENYING THE WRIT

1. Introduction

There are no compelling reasons for review of the decision of the court of appeals. The matters for which review is sought do not fall under any of the categories set forth in Rule 10 of the Rules of the Supreme Court of the United States and, furthermore, there is no error in the decisions of either of the courts below. This action presents a simple and straightforward application of the doctrine of *res judicata*. If there is anything noteworthy in it, it is the persistent abuse of process by Petitioners, which the courts below refused to sanction.

The essence of this action is as follows: Petitioners filed an action in U.S. District Court invoking a fraud exception to *res judicata* in order to request the district court to set aside a judgment entered in 1986 by the state court dismissing Petitioners' construction defects action against, *inter alia*, Respondent Chase. The district court recognized the applicability of the exception, but proceeded to dismiss the action on the merits. Instead of seeking reconsideration or appealing the dismissal, Petitioners re-filed the same action in state court, from whence it was removed to the U.S. District Court on diversity grounds. Because the removed state action and the previous federal action were identical in all essential respects, a fact admitted by Petitioners themselves, the

district court properly dismissed the case on grounds of *res judicata*.

Petitioners appeal this dismissal claiming yet another exception to *res judicata*. They also argued that *res judicata* barred the district court from exercising jurisdiction over the removed action, but that this bar did not apply to the state court. Basically, their argument is that the judgments of a federal court are binding upon other federal courts, but not upon state courts (or a federal court sitting in diversity).

2. Federal, not Puerto Rico, Law Determines *Res Judicata* in this Action.

Petitioners' main argument is that *res judicata* has no preclusive effect in this action based on the alleged applicability of an exception under state law. According to Petitioners, the district court should have looked to state law in order to decide whether a *federal* judgment is *res judicata*. They further claim that the relevant state law, i.e. Puerto Rico law, provides a "public policy" exception to the application of *res judicata*, and allege that such an exception comes into play whenever there is an effect on "the family nucleus" or when "the safety of what it is constructed" is concerned. Caballero and Benet's Petition for a Writ of Certiorari (the "Petition"), at 7.[5]

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[5] Petitioners also contend that Puerto Rico's statutory right to a homestead justifies an exception to *res judicata*. 31 L.P.R.A. § 1851. However, they misstate the scope of this right. Petition, at 16. This provision only protects the sum of $1,500 from foreclosure by creditors. Quite simply, if the possibility of losing

The basis for Petitioners' claim that state law should have been used to determine the preclusive effect of *res judicata* is the allegation that "[t]he U.S. Supreme Court already determined that federal res judicata principles only apply on non-diversity cases." Petition, at 7. In support of this proposition, they cite *Heiser* v. *Woodruff*, 327 U.S. 726 (1946).

Woodruff, holds nothing of the sort. It merely reaffirms that "[i]t has been held in non-diversity cases, since *Erie R. Co.* v. *Tompkins*, that the federal courts will apply their own rule of res judicata," 327 U.S. at 733. *Woodruff* does not limit that rule to non-diversity cases. The law is actually otherwise. Even though state law governs the adjudication of substantive aspects of state law claims in diversity actions, "federal common law governs the claim-preclusive effect of a dismissal by a federal court sitting in diversity." *Semtek International Inc.* v. *Lockheed Martin Corp.*, 531 U.S. 497, 121 S.Ct. 1021, 149 L.Ed.2d 32 (2001), Case No. 99-1151, 2001 U.S. LEXIS 1951, at *21 (Feb. 27, 2001). In other words, the question whether the complaint in this case is barred by Judge Fusté's dismissal of Petitioners' prior action must be determined by federal, not Puerto Rico, law.

Petitioners' reliance on *Woodruff* is ironic, given that *Woodruff* holds squarely against Petitioners. In *Woodruff*, an attempt was made to relitigate a claim that a previous judgment had been procured by fraud. The Supreme Court held, however, that the relitigation of the claim was

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one's home in a foreclosure action were an exception to *res judicata*, mortgage foreclosures and evictions would always be subject to relitigation.

barred by *res judicata* because the allegations of fraud had already been dismissed in a previous action because they "had not [been] sustained . . . by any tender of evidence or other proof." *Woodruff*, 327 U.S. at 725.

The Court held that the previous dismissal "was a final judgment on the issues thus raised, binding on the parties to the proceeding. It is not any the less so, as the Court of Appeals thought, because the moving parties failed to support their allegations by evidence." *Id.* The Court later added, in terms fully applicable to this action, that "[n]or can an attack be sustained on a judgment allegedly procured by fraudulent representations of the plaintiff, when the charge of fraud has been rejected in previous litigations by the parties to the suit in which the judgment was rendered, or their representatives." *Id.* at 736.

Woodruff disposes of at least a couple of Petitioners' arguments. First, it rebuts Petitioners' argument that the judgment by Judge Fusté should not be recognized as *res judicata* because of the very allegations of fraud that Judge Fusté dismissed by means of summary judgment. Second, it directly contradicts Petitioners' argument that Judge Fusté's judgment is not *res judicata* because it was based on a finding of lack of sufficient evidence or proof for the alleged fraud, or because no trial was held on the issues, as Petitioners mistakenly believe to be required for *res judicata*. *See* Petition, p. 6.

From another perspective, Petitioners' arguments for the application of Puerto Rico *res judicata* principles are further invalidated because the issues addressed in Judge Fusté's decision were federal ones: the applicability and

interpretation of Fed. R. Civ. P. 60(b). All the more reason, then, for federal *res judicata* principles to be applied, regardless of whether this was a diversity case. "[F]ederal reference to state law will not obtain, of course, in situations in which state law is incompatible with federal interests. If for example, state law did not accord claim-preclusive effect to dismissals for willful violation of discovery orders, federal courts' interest in the integrity of their own processes might justify a contrary federal rule." *Semtek, supra,* 2001 U.S. LEXIS 1951 at *22-*23. Clearly, the interpretation and implementation of the Federal Rules of Civil Procedure and the policies contained in them is a matter to be decided according to federal, not Puerto Rico law.

Now, in federal common law, no public interest exception to *res judicata* exists. This was categorically established in *Federated Department Stores, Inc.* v. *Moitie,* 452 U.S. 394 (1981):

> "Simple justice" is achieved when a complex body of law developed over a period of years is evenhandedly applied. The doctrine of res judicata serves vital public interests beyond any individual judge's ad hoc determination of the equities in a particular case. There is simply "no principle of law or equity which sanctions the rejection by a federal court of the salutary principle of res judicata." The Court of Appeals' reliance on "public policy" is similarly misplaced. This Court has long recognized that "[p]ublic policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties." We have

> stressed that "[the] doctrine of res judicata is not a mere matter of practice or procedure inherited from a more technical time than ours. It is a rule of fundamental and substantial justice, 'of public policy and of private peace,' which should be cordially regarded and enforced by the courts." *Moitie*, 452 U.S. at 401. (Citations omitted.)

Quite clearly, this lack of a public interest or equitable exception to *res judicata* in the federal jurisdiction is fatal to Petitioners' claim that their action is exempt from *res judicata* because of some vague and overbroad alleged public interest.

3. Puerto Rico Law Does Not Provide an Exception to *Res Judicata* in this Action

In any case, even if Puerto Rico's doctrine of *res judicata* were to apply, it would not have prevented dismissal. Puerto Rico's judicially created "public interest" exception is not as far-reaching as Petitioners present it. It is rather a narrow exception that should be limited to those facts where the Puerto Rico Supreme Court has expressly held it to apply.

According to Petitioners, two different public interests are involved in this case, both of which justify exceptions to *res judicata*. They contend, first, that the "family nucleus is affected negatively," and second, that this action deals with "the safety of what it is constructed." Petition, pp. 6-7. These categories, however, are both unworkable as exceptions to *res judicata* and inapposite with respect to the issues involved in this action. Furthermore, Puerto Rico's Supreme Court has never recognized such broad exceptions to *res judicata* as actions

"affect[ing] the family nucleus" or "the safety of what it is constructed," nor would it be likely to do so. Such sweeping exceptions would wreak havoc upon the legal order of Puerto Rico.[6] They would result in endless relitigation of numerous controversies and would be contrary to the Puerto Rico Supreme Court's declaration that the rule of *res judicata* "has few exceptions[,] for application to very limited and particular circumstances." *Ramos González* v. *Félix Medina*, 121 D.P.R. 312, 340 (1988) (Official Translation).

Actually, the cases that Petitioners cite for the proposition that those two broad categories represent public interests that justify exceptions to the doctrine of *res judicata* hold nothing of the sort. First, *Ramos González*, which is represented by Petitioners as holding "that the family nucleus and how it is affected negatively goes beyond and above the defense of res judicata and collateral estoppel" (Petition, at p. 10) does not even deal with family issues. In reality, it deals with Puerto Rico's interest in the integrity of its justice system, and with grave accusations of improper acts by three Puerto Rico court marshals.

The facts in *Ramos González* were as follows. Ramos González's house was sold in a mortgage foreclosure proceeding and then resold to one of the co-defendants, a Puerto Rico marshal, who, accompanied by two fellow marshals,

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[6] For example, according to Petitioners' interpretation, *res judicata* would never apply in actions involving family law. *See* Petition, p. 11. This is such an overreaching proposition that no court of law would ever uphold it.

> went to the house of [coplaintiff] Ramos González and his wife holding a photocopy of the judicial sales minute. It is alleged that the marshals altered the same without authorization entering the phrase 'order for eviction' on the back of the sheet. . . . [A]fter a discussion as to the ownership of the house where [plaintiffs] lived with their fourteen children and over the existing crops, the said marshals inflicted a bullet wound on Ramos González, and beat his wife and a minor son. They also destroyed the roof of the dwelling. Then they arrested the spouses, took them to the Caguas Regional Hospital and abandoned them there. *Ramos González*, 121 D.P.R. at 317 (Official Translation).

With these facts in mind, the Puerto Rico Supreme Court refused to hold that a dismissal by the U.S. District Court of a civil rights case for lack of prosecution should preclude a *concurrent tort* action in Puerto Rico Superior Court based on the same events. It held that:

> [T]he public interest in keeping our system of justice free of any appearance of partiality, even if unfounded, surpasses the interest in keeping the finality and efficacy of judgments from other jurisdictions, specially if we consider that the judgment entered in this case was a dismissal for lack of prosecution and not a judgment issued after a plenary trial and that, under the present state of law at the local federal forum, a judgment of that nature no longer operates as an adjudication on the merits. *Id.*, 121 D.P.R. at 341-342 (Official Translation).

On the other hand, *Geigel* v. *Mariani*, 85 P.R.R. 43, 85 D.P.R. 46 (1962), cited by Petitioners to support the proposition that construction safety is a public interest that

justifies an exception to *res judicata*, is also inapplicable. That case interprets Art. 1483 of the Puerto Rico Civil Code, 31 L.P.R.A. § 4124, which establishes a 10-year statute of limitations for claims of construction defects against the contractor and the architect of a defective structure. *Geigel* does not deal with *res judicata* at all but rather with the correct interpretation of the term "construction vices" as used in Art. 1483. The Puerto Rico Supreme Court did state in *Geigel* that there was a public interest in construction safety, but it was offered as an explanation of the legal rule that contractors and architects are not discharged of the responsibility imposed by Art. 1483 even if the owner of the building is aware of the defects in the proposed construction.

The Puerto Rico Supreme Court, moreover, has never recognized a *res judicata* exception for claims alleging construction defects. In fact, when the Puerto Rico Supreme Court has faced the issue of *res judicata* in construction defects cases, it has not even hinted that a public interest exception may apply. *See Feliciano Ruiz* v. *Alfonso Development Corp.*, 96 P.R.R. 105, 96 D.P.R. 108 (1968), *infra*, and *González* v. *Agostini*, 79 P.R.R. 481, 79 D.P.R. 510, 513-514 (1956). In *Agostini*, for example, an action for hidden construction defects was held not barred by *res judicata* owing to a prior decision, because the two causes of action concerned originated from different contracts, not because of "construction safety." The Court never hinted, even in passing, the possibility of a public interest exception to *res judicata* for claims about construction defects.

The inapplicability of any Puerto Rico exception to *res judicata* is further made clear once it is considered that

none of the decisions cited by Petitioners in which the Puerto Rico Supreme Court held that "as a matter of public policy, the doctrine of res judicata should not be applied if it would defeat the ends of justice" is remotely analogous to the present one. *See* Petition, p. 11.

First, in *Figueroa* v. *Municipality of San Juan*, 98 P.R.R. 523, 98 D.P.R. 534, 559 (1970), *res judicata* was held not to apply because the issue before the court in the second action was based on events that took place after the adjudication of the first one.

Second, in *Feliciano Ruiz, supra,* two parties were dismissed because of failure to state a claim against them. Later, when the dissolution of one of the corporate defendants was discovered, plaintiff sought leave to amend the complaint in order to bring back to the action the parties previously dismissed. The Supreme Court held that *res judicata* did not bar the re-inclusion of those parties because there was no identity of cause and the parties were not being included in the same capacity as before[7] since the new claims against them were based on the derivative responsibility of stockholders of a dissolved corporation. It should also be noted that this case concerned both claims for construction defects and *res judicata,* but the Puerto Rico Supreme Court never considered that a public interest exception to *res judicata* could exist.

Third, *Pérez* v. *Bauzá*, 83 P.R.R. 213, 83 D.P.R. 220 (1961), was a paternity suit that was dismissed because of

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[7] *See, e.g., Futura Development Corp.* v. *Centex Corp.*, 761 F.2d 33 (1st Cir. 1985), for an explanation of the requirements of Puerto Rico's doctrine of *res judicata*.

lack of prosecution. The Puerto Rico Supreme Court created an exception to *res judicata* in that instance because it felt a minor child should not be penalized by "the overreaching or improper conduct of his legal representative" against which the minor was helpless to protect himself. *Id.*, 83 P.R.R. at 218. The Supreme Court stated that paternity suits were endowed with great public interest and constitutional implications regarding the dignity of the minor. It noted that Puerto Rico's Constitution proclaims that the dignity of a human being is inviolable. *Id.*

Fourth, in *Torrens González* v. *Fireman's Fund Insurance Co.*, 385 F. Supp. 140 (1974), the effect of *res judicata* was denied to a Puerto Rico court judgment dismissing a case on grounds of lack of prosecution. Although the district court stated that this denial of *res judicata* was based on *Bauzá*'s holding that the doctrine of *res judicata* "is not to be applied if in so doing the ends of justice would be defeated, especially if reasons of public policy are involved," it emphasized that "[a]dditionally, it must be seen that the Court's dismissal for lack of prosecution, as the record reflects, is being questioned at present, in the local proceedings. . . . Therefore, in our opinion, *no final judgment is present.*" *Id.* at 146-147 (emphasis added).

Fifth, *Rodríguez* v. *Baldrich*, 628 F.2d 691 (1st Cir. 1980), is inapplicable to this action because it addressed "the *res judicata* implications of a prior *Puerto Rican Superior Court* judgment". 628 F.2d at 693 (emphasis added). This is distinguishable from the present action where the *res judicata* implications involved are those of a prior *federal court* judgment. The First Circuit did not determine in that action, as alleged by Petitioners, "that under diversity of citizenship the Court will look into the res

judicata doctrine under Puerto Rico law." Petition, p. 11. What the First Circuit court actually noted was that the weight of authority held that state (or "local law") determines the *res judicata* implications of a prior state judgment. *Baldrich*, 628 F.2d at 693.

In fact, the court in *Baldrich* found unconvincing an argument similar to that offered by Petitioners. As in this instance, in *Baldrich* the plaintiffs contended that *res judicata* should not apply "because a separate line of Puerto Rican cases states that, as a matter of public policy, *res judicata* should not be applied if it would defeat the ends of justice". *Id.* A superficial analogy was made to *Pérez* v. *Bauzá*, *supra*, because the rights of a minor were involved. The First Circuit noted the analogy, but stated that "we are by no means convinced that in this case the Puerto Rican courts would decline to invoke *res judicata*, just because a minor is involved and the defendant has not defended a suit on the merits." *Baldrich*, 628 F.2d at 693. It noted that "in *Pérez*, the court also emphasized the significant public interest that filiation actions have under Puerto Rican law. This case lacks that feature, and as such is more of a private dispute." *Id.* at 693-694, n. 4 (citation omitted).

From another perspective, even if such broad categories as "family nucleus" and "construction safety" were to be considered public interests that justify an exception to *res judicata*, Petitioners have failed to show how they are applicable or relevant to Judge Fusté's decision. Apart from general and conclusory allegations, Petitioners have always failed to discuss and specify which public interest would be promoted by denying preclusive effect to Judge Fusté's summary dismissal of the action. The issue before

Judge Fusté dealt neither with the family nucleus nor with construction safety, and Petitioners have referred to no other "public interest."

Moreover, Puerto Rico law does not truly have an exception to *res judicata* based on "public interest" *per se*. The true formulation of the exception established by the Puerto Rico Supreme Court is that "as a matter of public policy, *res judicata* should not be applied *if it would defeat the ends of justice.*" *Baldrich, supra,* 628 F.2d at 693 (emphasis added); *see* the cases cited therein. However, it is quite impossible to envision how the ends of justice would be defeated by giving Judge Fusté's judgment the force of *res judicata*. Petitioners have already had the benefit of having their claims heard by various courts. They have litigated this matter during 22 years, and their claims have been dismissed in six separate instances, both in federal court and in Puerto Rico state court. *See* Judge Fusté's Opinion and Order, App. at 11A-12A, which identifies at least four separate actions, all ending in dismissal (a July 5, 1990 dismissal by the Puerto Rico Superior Court is missing): the present one is the sixth. In this context, disallowing Judge Cerezo's and Judge Fusté's rulings would be to permit the continuance of an enduring vexatious conduct by Petitioners.

In precise terms, the issues before Judge Fusté were (1) whether under Fed.R.Civ.P. 60(b) the U.S. District Court could entertain an action to set aside a judgment of the Puerto Rico Superior Court because of a previously unlitigated claim of fraud upon the court, and (2) whether in effect to set aside the previous judgment. Essentially, the issue facing Judge Fusté was whether an exception to *res judicata* should apply with respect to a

prior Puerto Rico Superior Court judgment. Judge Fusté held that the exception applied, but then he entertained Petitioners' claim of fraud and found it lacking evidentiary support. Since no evidence of the alleged fraud had been proffered, the judgment of the Superior Court was left untouched. Petitioners Caballero and Benet, nevertheless, now wish to find a *res judicata* exception to a decision that was rendered on the basis of a *res judicata* exception to an even earlier judgment.

Caballero and Benet, in fact, have offered no reasons – whether based on a public interest or on another exception – why Judge Fusté's decision should not be considered *res judicata*. A close examination of Petitioners' position shows that they are ultimately questioning the correctness not of Judge Cerezo's ruling, but of Judge Fusté's. They contend somewhat confusedly that the allegations of fraud that Judge Fusté determined to be without merit justify denying Judge Fusté's decision itself the force of *res judicata*. *See* Petition, at 12-13. To that end, they misrepresent Judge Fusté's findings, claiming that he "acknowledged" that "[r]espondents left a building in ruins and with the possibility of collapsing and committed a fraud upon the First Instance, Superior Court of Puerto Rico", and that he further took judicial notice of the possibility of the building's collapse. Petition, p. 12.

Both these allegations are patently incorrect. First, Judge Fusté decided that Petitioners' allegations of fraud failed to meet the heightened pleading standards of Fed.R.Civ.P. 9 (b) and, furthermore, that the proffered evidence of fraud was insufficient. Judge Fusté's Opinion and Order, App. at 17A-20A. The court found, for example, that Petitioners' key piece of evidence, "[a] study

conducted four years after the lawsuit in which it is offered as proof of fraud is not a reliable means of supporting Plaintiffs' claims." App. at 19A. Second, as to the alleged possibility of the buildings' collapse, this simply is not the sort of fact about which a court may take judicial notice, Fed. R. Evid. 201 and in truth, the court only took notice of the fact that *Petitioners' study* claimed "that the building was in a horrendous condition and could collapse." App. at 18A-19A. Such notice, however, is a mere acknowledgment of the content of Petitioners' allegations, not of any fact about the building itself.

Ultimately, Petitioners' position, rather than invoking an exception to *res judicata*, is an attack on the correctness of Judge Fusté's decision, an attack that should have been addressed in an appeal. Petitioners, however, voluntarily chose to forego that appeal because they considered it would "take too long," as they themselves admitted to the court. *See* Judge Cerezo's Order, App. at 7A-8A, and ¶31 of appellants' Superior Court Complaint, App. at 26A. Furthermore, under both federal and Puerto Rico law, a final and unappealable judgment must be given the effect of *res judicata* regardless of whether it is correct or not. *Moitie*, 452 U.S. at 398. *Ramos González*, 121 D.P.R. at 340 (a final judgment should not be set aside because it appears erroneous, since this "could damage the due process of law afforded to the party favored by the previous judgment").

4. There is no Proper Issue of Abstention in this Action.

According to Petitioners, the U.S. District Court or Judge Cerezo "should have abstained to exercise its jurisdiction." Petition, p. 19. They claim that abstention should have followed upon the doctrine set forth in *Colorado River Water Conservation Dist.* v. *United States,* 424 U.S. 800 (1976). This argument, however, is completely inapplicable to the present action, which was not a federal action concurrent with a state court proceeding, but an action removed to federal court from state court. As a result, *Colorado River* abstention is of no relevance here. Furthermore, the issue of abstention was never argued by Petitioners before the District Court. It was first raised by Petitioners in their brief to the First Circuit Court of Appeals, without any serious effort to develop the argumentation; it must therefore be deemed waived.

CONCLUSION

There is no reason why the judgments of the U.S. District Court and the First Circuit Court of Appeals in this action should be reviewed by the U.S. Supreme Court. The dismissal of Petitioners' complaint was the result of a straightforward and correct application of the doctrine of *res judicata,* a dismissal that would be upheld by either Puerto Rico or federal common law. The exceptions alleged by Petitioners to deny a previous U.S. District Court judgment the force of *res judicata* simply do not exist. This action is nothing more than an attempt by Petitioners to evade the effects of a judgment by the U.S.

District Court that they voluntarily chose not to appeal. It is yet another vexatious attempt to continue relitigating claims that have been repeatedly dismissed by the U.S. and Puerto Rico courts for a period of over more than two decades. The Court should therefore deny Petitioners' writ of certiorari.

RESPECTFULLY SUBMITTED, at San Juan, Puerto Rico, this 13th day of May, 2002.

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